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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Advanced Reimbursement Solutions LLC,
10 Plaintiff,
11 v.
12 Spring Excellence Surgical Hospital LLC,
13 et al.,
14 Defendants.

No. CV-17-01688-PHX-DLR
ORDER

15 This action arises out of a series of contracts Defendant Joanna Davis negotiated
16 with Plaintiff Advanced Reimbursement Solutions, LLC (ARS), and signed as Chief
17 Executive Officer of Defendant Spring Excellence Surgical Hospital, LLC (SESH).
18 ARS seeks damages from SESH for either breach of contract and the implied covenant of
19 good faith and fair dealing, or for unjust enrichment. Alternatively, ARS seeks damages
20 from Davis for breaching the implied warranty of authority. Before the Court is SESH's
21 motion to dismiss for lack of personal jurisdiction and improper venue or, alternatively,
22 motion to transfer. (Doc. 22.) The motion is fully briefed. (Docs. 22, 28, 33.) For the
23 reasons stated below, SESH's motion is denied.

24 **I. Background**

25 ARS is a third-party medical billing service located in Phoenix, Arizona. (Doc. 18
26 ¶¶ 1, 12.) The company contracts with medical providers to process and bill out-of-
27 network health insurance claims. (¶ 13.) In August 2016, ARS began discussions with
28 Davis, who represented that she was responsible for the day-to-day management of

1 SESH. (¶ 15.) At some point thereafter, Davis, purporting to be SESH's CEO, executed
2 the Executive Billing Agreement (EBA) with ARS. (¶¶ 14-33.) SESH directed patient
3 and medical services information to ARS, which began filing medical claims for
4 reimbursement. (Doc. 28-1 ¶¶ 25-26.) In December 2016, ARS began sending invoices
5 to SESH for its services, but SESH refused to pay. (Doc. 18 ¶¶ 43-67.)

6 ARS and SESH dispute the parties to the EBA. ARS alleges that SESH, through
7 its agent Davis, entered into a contract for its billing services. (¶¶ 16-17.) Pursuant to
8 that contract, ARS was entitled to compensation for its reimbursement claims processing
9 services on behalf of SESH. (¶¶ 28-31.) Alternatively, if Davis did not have the
10 authority to contract on behalf of SESH, ARS argues that SESH nevertheless ratified the
11 contract by accepting approximately \$2.78 million in reimbursement claims filed by ARS
12 on its behalf. (Doc. 28 at 8-9.) Under either theory, ARS argues that SESH is subject to
13 the forum selection clause contained within the EBA, under which the parties stipulated
14 to Phoenix, Arizona as the exclusive jurisdiction for actions arising out of the EBA. (*Id.*)
15 In contrast, SESH claims that ARS unreasonably relied on Davis' representations that she
16 was SESH's CEO. (Doc. 22 at 3-4; Doc. 33 at 2-4.) SESH argues that ARS fails to
17 allege facts plausibly demonstrating that SESH held Davis out as an agent with the
18 authority to contractually bind it with ARS. (Doc. 22 at 4.) SESH also argues that it is
19 not subject to the EBA's forum selection clause and it has not consented to jurisdiction in
20 Arizona because it is not a party to the contract. (*Id.* at 2-4.)

21 **II. Personal Jurisdiction**

22 **A. Legal Standard**

23 "When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff
24 bears the burden of demonstrating that the court has jurisdiction over the defendant."
25 *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). "Where, as here, the
26 defendant's motion is based on written materials rather than an evidentiary hearing, the
27 plaintiff need only make a prima facie showing of jurisdictional facts to withstand the
28 motion to dismiss." *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th

1 Cir. 2011). Moreover, “uncontroverted allegations in [the plaintiff’s] complaint must be
2 taken as true, and conflicts between the facts contained in the parties’ affidavits must be
3 resolved in [the plaintiff’s] favor for purposes of deciding whether a prima facie case for
4 personal jurisdiction exists.” *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94
5 F.3d 586, 588 (9th Cir. 1996) (internal quotation and citation omitted). Here, the Court
6 takes ARS’ allegations as true because none are contradicted by affidavit.

7 **B. Analysis**

8 “Federal courts ordinarily follow state law in determining the bounds of their
9 jurisdiction over persons.” *Walden v. Fiore*, -- U.S. --, 134 S. Ct. 1115, 1121 (2014); *see*
10 *also* Fed. R. Civ. P. 4(k)(1)(A). Arizona authorizes courts to exercise jurisdiction to the
11 maximum extent permitted by the Due Process Clause of the United States Constitution.
12 *See* Ariz. R. Civ. P. 4.2(a). Thus, courts in this District may exercise personal
13 jurisdiction over a defendant who is not physically present in Arizona if the defendant has
14 sufficient minimum contacts with the State, such that the suit can be maintained without
15 offending traditional notions of fair play and substantial justice. *See Int’l Shoe Co. v.*
16 *Washington*, 326 U.S. 310, 316 (1945).

17 Personal jurisdiction may be general or specific. General personal jurisdiction
18 over a nonresident defendant requires “continuous corporate operations within a state so
19 substantial and of such a nature as to justify suit against it on causes of action arising
20 from dealings entirely distinct from those activities.” *Id.* at 318. Conversely, specific
21 personal jurisdiction exists when a lawsuit arises out of, or is related to, the defendant’s
22 contacts with the forum. *Helicopteros Nacionales de Colo., S.A. v. Hall*, 466 U.S. 408,
23 414 n.8 (1984). Here, ARS contends only that SESH is subject to specific jurisdiction.
24 (Doc. 28 at 10-11.)

25 In determining whether specific jurisdiction over an out-of-state defendant exists,
26 the Court applies a three-prong test:

- 27 (1) The non-resident defendant must purposefully direct [its]
28 activities or consummate some transaction with the forum or
resident thereof; or perform some act by which [it]
purposefully avails [itself] of the privilege of conducting

1 activities in the forum, thereby invoking the benefits and
2 protections of its laws;

3 (2) the claim must be one which arises out of or relates to the
4 defendant's forum-related activities; and

5 (3) the exercise of jurisdiction must comport with fair play
6 and substantial justice, i.e. it must be reasonable.

7 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). ARS
8 bears the burden of satisfying the first two prongs. *Id.* at 802. If ARS succeeds, the
9 burden shifts to SESH to "present a compelling case" that the exercise of jurisdiction
10 would not be reasonable. *Id.*

11 **1. Purposeful Availment**

12 ARS has shown that SESH purposefully availed itself of this forum. The
13 purposeful availment prong requires SESH to "have performed some type of affirmative
14 conduct which allows or promotes the transaction of business within the forum state."
15 *Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988.) SESH argues that
16 "[b]eyond actions by Davis exceeding her authority, [ARS] directs this Court to no other
17 evidence to tie SESH to Arizona." (Doc. 33 at 6.) This argument, however, overlooks
18 the affidavit of Jeffrey L. Webb, ARS' National Director of Sales, in which he details
19 how SESH sent patient and medical services information to ARS in Arizona. (Doc. 28-1
20 ¶¶ 25-26.) Based on this information, ARS submitted approximately \$2.78 million in
21 reimbursement claims on SESH's behalf. (Doc. 28 at 15; Doc. 18 ¶¶ 44-45, 48-49, 52-
22 53, 56-57, 60-61.) Although SESH argues in its reply memorandum that Webb's
23 affidavit concerns conduct by Davis, SESH fails to offer discovery materials, affidavits,
24 or declarations supporting this point. The Court therefore finds that, by sending patient
25 and medical services information to and accepting reimbursement payments from ARS in
26 Arizona, SESH engaged in sufficient affirmative conduct purposefully availing itself of
27 this forum. *Brink v. First Credit Res.*, 57 F. Supp. 2d 848, 860-61 (D. Ariz. 1999)
28 (finding that "by purposefully directing [] letters to residents of Arizona, [defendants]
fulfilled the purposeful availment element").

2. ARS' Claim Arises Out of SESH's Forum-Related Activities

ARS also has shown that its claims arise out of SESH's contacts with the forum. A claim arises out of a defendant's contacts with the forum when the claim would not have arisen "but for" the defendant's actions in the forum. *Panavision Int'l v. Toeppen*, 141 F.3d 1316, 1322 (9th Cir. 1998). Here, ARS' alleges, at least in part, that SESH was unjustly enriched by receiving \$2.78 million in reimbursement claims without paying the invoices for ARS' services. (Doc. 18 ¶¶ 45, 49, 53, 57, 61, 71.) SESH provided ARS patient and medical services information that enabled ARS to process out-of-network reimbursement claims for SESH. But for providing ARS this information, ARS would neither have been able to submit claims on SESH's behalf nor suffered the harm alleged.

3. Reasonableness of Exercising Jurisdiction over Defendants

Because ARS has shown that SESH purposefully availed itself of this forum and that its claims arise out of those forum-related contacts, the Court may exercise specific personal jurisdiction unless SESH otherwise demonstrates that it would be unreasonable to do so. *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) (noting that defendant "must come forward with a compelling case that the exercise of jurisdiction would not be reasonable"). In assessing the reasonableness of jurisdiction, the Court balances seven factors: (1) the extent of defendant's purposeful interjection into the forum state, (2) the burden on defendant, (3) the conflicts of the law between the forum state and defendant's home jurisdiction, (4) the forum state's interest in adjudicating the dispute, (5) the most efficient judicial resolution of the controversy, (6) the plaintiff's interest in convenient and effective relief, and (7) the existence of an alternative forum. *Terracom v. Valley Nat'l Bank*, 49 F.3d 555, 561 (9th Cir. 1995).

In its response memorandum, ARS demonstrates that the multifactor balancing test weighs in its favor. (Doc. 28 at 13.) SESH, however, presents no arguments regarding the reasonableness of jurisdiction. Instead, SESH argues only that it is not subject to personal jurisdiction in the forum because Davis was not its agent and therefore could not contractually bind it. (Doc. 22 at 2-4; Doc. 33 at 5-6.) For the reasons

1 articulated above, however, the Court may exercise specific personal jurisdiction over
2 SESH based on its forum-related contacts regardless of whether it is bound by the EBA.
3 Because SESH has failed to offer a “compelling case” that exercising jurisdiction would
4 be unreasonable, the Court finds that it has specific personal jurisdiction over SESH.

5 **III. Venue**

6 SESH also contends that venue is improper in Arizona, both because it is not a
7 party to the EBA and, pursuant to 28 U.S.C. § 1391(b), Texas is the proper venue. (Doc.
8 22 at 4-5; Doc. 33 at 7.) ARS argues, however, that venue is proper in Arizona under
9 either § 1391(b)(2) or (b)(3). (Doc. 28 at 15-16.) The Court finds that venue is proper in
10 the District of Arizona.

11 Venue in federal court is governed by § 1391(b), which states in relevant part that
12 an action may be brought in:

13 (2) a judicial district in which a substantial part of the events
14 or omissions giving rise to the claim occurred, or a substantial
part of property that is the subject of the action is situated; or

15 (3) if there is no district in which an action may otherwise be
16 brought as provided in this section, any judicial district in
17 which any defendant is subject to the court’s personal
jurisdiction with respect to such action.

18 Here, provision (b)(3) is inapplicable because there is at least one other district—the
19 Southern District of Texas—in which this action could be brought. Nevertheless,
20 pursuant to (b)(2), venue is proper in Arizona because a substantial part of the events or
21 omissions giving rise to the claims occurred in Arizona. *See Texmo Oil Co. Jobbers, Inc.*
22 *v. Y Travel LLC*, No. 13-cv-8290, 2014 WL 2617248, at *2 (D. Ariz. June 12, 2014)
23 (“[F]or venue to be proper, significant events or omissions material to the plaintiff’s
24 claim must have occurred in the district in question, even if other material events
25 occurred elsewhere.”). As previously discussed, SESH directed patient information and
26 medical claims documents to Arizona in order for ARS to perform work on its behalf.
27 Moreover, ARS employees processed these reimbursement claims in and submitted them
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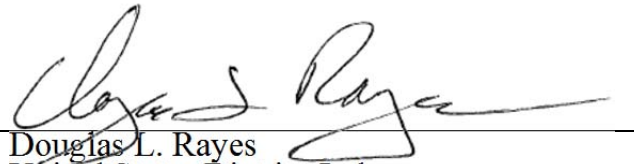
1 from Arizona.¹

2 **IV. Conclusion**

3 For the foregoing reasons, the Court finds that it has specific personal jurisdiction
4 over SESH, and that venue is proper in this District. Because the Court's findings are
5 based on SESH's forum-related contacts, it need not prejudge the applicability of the
6 forum selection clause contained within the EBA or whether an agency relationship exists
7 between SESH and Davis.

8 **IT IS ORDERED** that SESH's motion to dismiss for lack of personal jurisdiction
9 and improper venue or, alternatively, motion to transfer (Doc. 22) is **DENIED**.

10 Dated this 12th day of October, 2017.

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Douglas L. Rayes
United States District Judge

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¹ SESH notes that the Court has discretion to transfer a case to a different venue if warranted by the convenience of the parties and witnesses, and if such a transfer would promote the interests of justice. (Doc. 22 at 4.) SESH fails, however, to develop this argument. Indeed, SESH does not even cite 28 U.S.C. § 1404(a) as a basis for its motion. The Court therefore does not address whether the Southern District of Texas is a more convenient forum.